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UNITED STATES OF AMERICA  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FISHERMEN’S FINEST, INC., NORTH  
PACIFIC FISHING, INC., and U.S. FISHING,  
LLC,

Plaintiffs,

v.

THE HONORABLE CARLOS M. GUTIERREZ,  
Secretary of the United States Department of  
Commerce,

Defendant.

Case No. C07-1574MJP

ORDER REGARDING IN  
CAMERA REVIEW

On July 15, 2008, the Court granted in part Plaintiff’s motion to compel the inclusion in the administrative record of selected documents that the National Marine Fisheries Service (“NMFS”) had withheld on the basis of a claim of deliberative process privilege. (Dkt. No. 49.) The Court ordered production of twenty-eight of the documents and ordered an in camera review of the remaining five documents. (Id.) NMFS has produced the five documents for in camera review. Having reviewed those documents in light of the Court’s previous order, the Court ORDERS as follows:

(1) Defendant must produce Document No. 233. This document is neither pre-decisional nor does it implicate any policy-oriented judgment on the part of the agency, and therefore is not protected by the deliberative process privilege.

(2) Document No. 282 is protected by the deliberative process privilege and need not be produced to Plaintiff. This document is pre-decisional to potential management options for

1 Pacific cod bycatch issues and reflects policy-oriented judgment of the agency.

2 (3) Defendant must produce Document No. 339. This document is neither pre-decisional  
3 nor does it implicate any policy-oriented judgment on the part of the agency, and therefore is not  
4 protected by the deliberative process privilege.

5 (4) Defendant must produce Document No. 380. This document discusses how to  
6 translate Council policy into regulatory language and is not privileged.

7 (5) Document No. 433 is protected by the deliberative process privilege and need not be  
8 produced to Plaintiff. This e-mail exchange among agency staff discusses potential policy  
9 decision proposals to deal with an inconsistency in calculating sideboards under Amendment 80  
10 and 85.

11 (6) Plaintiff's need for the materials and the need for accurate fact-finding does not  
12 override the Government's interest in non-disclosure. See FTC v. Warner Commc'ns, 742 F.2d  
13 1156, 1161 (9th Cir. 1984). It does not appear that either of the privileged documents is highly  
14 relevant and disclosure would hinder "frank and independent discussion regarding contemplated  
15 policies and decisions." See id.

16 (7) Defendant must produce the three non-privileged documents to Plaintiff within seven  
17 (7) calendar days of this order. Defendant must also update the Court's copy of the  
18 administrative record with these documents.

19 The clerk is directed to send copies of this order to all counsel of record.

20 Filed this 27th day of August, 2008.

21 

22 Marsha J. Pechman  
23 United States District Judge  
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